661.

SUPREME COURT OF THE UNITED STATES.

No. 144.

THOMAS WILLIAMS, ADMINISTRATOR OF BENJAMIN J. BALDWIN, APPELLANT,

vs.

JOHN W. & WM. H. BENEDICT, TRADING UNDER THE FIRM AND STYLE OF BENEDICT & BENEDICT.

ON APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Bill of complaint	1	2
Exhibit C,	8	7
Judgment at law referred to in bill of complaint	9	8
Substitute for exhibit D, " " "	9	8
Injunction bond	9	8
Writ of supersedeas	10	9
Writ of injunction	11	10
Motion of defendant	12	10
Order of publication	13	11
Order that bill be taken as confessed	13	11
Demurrer of defendants	13	12
Cause submitted on briefs	14	12
Decree	15	13
Bond for writ of error	15	14
Appeal prayed and allowed	17	14
Appeal bond	17	15
Clerk's certificate	18	16
1st writ of error	19	16
1st citation and service	20	17
2d writ of error	22	17
2d citation and service	23	18

J. & G. S. Gideon, printers.

Exemplification.

THOMAS WILLIAMS, administrator of B. & J. BALDWIN, deceased,
vs.
BENEDICT & BENEDICT.

Be it remembered, that, on the 11th day of April, A. D. 1840, Thomas Williams, then a citizen of the northern district of the State of Mississippi, administrator of Benjamin J. Baldwin, deceased, filed in the office of the clerk of the district court of the United States for the northern district of Mississippi his certain bill of complaint, in the words and figures following, to wit:

To the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi:

Your orator, Thomas Williams, who is a citizen of Mississippi, and of the northern district thereof, would briefly, but respectfully, represent to your honor, that Benjamin J. Baldwin departed this life some time in the month of October, in the year eighteen hundred and thirty-eight, intestate, and that, in the month following, your orator applied for and obtained from the probate court of Yallabusha county, at the State aforesaid, letters of administration upon the estate of said intestate, as will fully appear by a certified copy of said letter, which is herewith filed, marked (A,) and to which your honor is respectfully referred. Your orator states that he entered with care and diligence upon his administration, giving the usual notice to creditors, collecting the effects and assets of his intestate, making an inventory thereof, and returning it to probate court having jurisdiction of the same, and doing and performing whatever else was enjoined by the statute laws of the State aforesaid in such cases made and provided. Your orator would further state, that at the time he entered upon said administration, and at the time of giving said notice and making said inventory as aforesaid, he honestly and confidently believed that his intestate's estate would be amply sufficient to satisfy all its creditors; nor was his conviction of this fact disturbed and unsettled until some time in the month of November in the year following, when about twelve months of his administration had elapsed. He would also state that many of his intestate's largest creditors, who are citizens of the State of Virginia, gave assurances, by letter, that, if the estate was solvent, and their claims against it were safe, they would forbear to push their collection, and give the administrator time to settle and wind up the estate in such a manner as would prove most advantageous and beneficial to the heirs. Your orator also states that, under the direction of the probate court aforesaid, he had sold at public sale an amount of his intestate's effects, which, together with the proceeds of a note drawn by a Henry A. Fowlkes, of the State of Alabama, for

about seven thousand dollars, made payable to the decedent and one Samuel Allen, and which was in the possession of the intestate at his death, and other debts due and owing to said estate, he deemed would be sufficient to satisfy the claims of the other creditors of his intestate, who had not indicated a willingness to forbear, and who would probably take the earliest steps permitted by the law for the recovery and collection of their debts. Your orator had hoped that, by this arrangement, and the indulgence of the creditors of the decedent, who are citizens of Virginia as aforesaid, he would be able to pay off all the debts of his intestate, and have something left for the heirs. Your orator felt particular solicitude upon the subject, because the decedent was connected to him by the endearing ties of relationship, as are also his heirs, one being his niece and the other his sister. On this account he was sincerely anxious, that, after all the liabilities of his intestate's estate had been discharged, that a surplus would be left for the benefit of the heirs aforesaid, in whose welfare it was nothing more than natural that he should feel the deepest interest. But with regret your orator informs your honor, that in this gratifying hope he was doomed to disappointment; for, shortly after your orator took upon himself the administration of the intestate's estate, he was informed by said Samuel Allen that the note of Henry A. Fowlkes, of Alabama, payable to himself and the intestate, for $7,000, was the property of the firm of Baldwin & Allen, who were first merchants and partners in trade in Virginia, and afterwards in Alabama; and that he, the said Allen, claimed it as the surviving partner of the said firm of Baldwin & Allen; and that it was to be appropriated to the payment of the debts of said firm; and that said note was not assets of the intestate in the hands of the administrator. Under these circumstances, and in view of these facts, your orator was advised by his attorney not to put said note in suit against the maker thereof, but to await the result of a suit in chancery, which it was believed the said Allen would institute, for the purpose of getting a decree for the surrender of said note to him as the intestate's survivor, which course would enable your orator to avoid unnecessary costs, which would accrue against his intestate's estate if it should be finally decided that said Allen was entitled to said note as survivor, &c. Your orator still believed that into whatever hands the said note might fall, whether it was adjudged to belong to the said Allen or the intestate's administrator, that the balance of the decedent's estate might, probably, by careful management, be adequate to the payment of his debts. But your orator would represent to your honor, that there were *heavy* and *latent* liabilities hanging over the estate of his intestate, which he was entirely ignorant of at that time, and which did not come to his knowledge until the latter part of the year 1839. About that time your orator was informed, and so believed, and still believes, that Allen, of the firm of Baldwin & Allen, who was to settle up and pay the debts of said firm, was insolvent, and that the individual property of the intestate would consequently be liable to the satisfaction of said partnership debts, which your orator has been informed, and believes, are very consider-

able. Your orator was also informed, and believes, that the said Baldwin & Allen, some time after their removal to Alabama, formed a partnership with Henry A. Fowlkes, and, after contracting many heavy debts in the eastern cities upon the account of said partnership, the said intestate and Allen sold out their interest to the said Henry A. Fowlkes, who agreed, in writing, to pay all the debts due and owing by said last mentioned partnership, and also agreed to pay the intestate about seven thousand dollars, or thereabouts, for which the note already mentioned was given; all which will more fully appear by reference to a copy of said agreement, which is herewith filed, (marked B,) and prayed to be considered by your honor. Your orator would also state to your honor that he was informed, some time in November, 1839, and so believes, that the said Fowlkes, some time in the fall of 1839, (the same year,) conveyed all his property and effects to trustees for the benefit of his creditors; and that the said note of $7,000, or thereabouts, was placed in the second class of preferred creditors in said trust; and that his property will not be sufficient to pay more than thirty or forty cents in the dollar on said note. Your orator has been informed, and believes, that the debts contracted by the firm of Fowlkes, Baldwin & Allen, were many and large, and that they are all placed in the second class of preferred creditors in the trust made by said Fowlkes; and since the said Allen is insolvent, and since the failure of the said Fowlkes, your orator has but little doubt but that the estate of his intestate will be subjected to heavy liabilities from this source. Your orator would represent to your honor, that, after all this information came to his knowledge, he did, without delay, *and before any of the debts of his intestate had been satisfied,* report the insolvency of the estate and its inadequacy to the payment of its debts under oath to the probate court, from whence administration issued; and that said court, being satisfied of the insolvency of said estate, appointed commissioners, as provided for by the statute of Mississippi, in case of the insolvency of intestate's estate, with instructions to examine and audit all claims presented by the creditors of said estate, according to law, and admit them to a "pro rata" distribution, as the law prescribes. This will more fully appear from a certified copy of the appointment of commissioners and order of sale, made by the probate court as aforesaid, which is herewith filed, (marked C,) and to which your honor's attention is respectfully invited.

Your orator would further state to your honor, that a few weeks before he made the above suggestion of the insolvency of the estate of his intestate, and before he was fully satisfied of the fact thereof, a suit was instituted against him, as the administrator of the said intestate, by John W. Benedict and William H. Benedict, of New York, trading under the style of Benedict and Benedict, in the district court of the United States for the northern district of Mississippi, at November term, 1839, upon a note drawn by the said intestate upon the partnership account of himself and said Allen, for $1,845 21 cents, and that judgment was had thereon at the same term of said court for 2,177 32 cents, a copy of which judgment is herewith filed and prayed to be considered by

your honor. Your orator states, that he suggested the insolvency of his intestate's estate to the probate court, on the first Monday in December following, and some time before execution issued upon said judgment; that he was advised that the judgment would amount to nothing more than a probate of the claim, and that the judgment creditors would only be entitled to a "pro rata" share of the intestate's estate or assets, as other creditors under the statute. But your orator would represent to your honor, that contrary to his expectation, and to the great wrong of his intestate's other creditors, an execution has recently issued upon said judgment, and has been levied by the marshal upon a large portion of the most valuable property of the intestate, forestalling and preventing your orator's sale of the said property, as administrator, under the authority and order of the probate court, and unless restrained must operate to the manifest wrong and gross injustice towards the other creditors of the said intestate. Your orator, while he would not presume to claim your honor's equitable aid but upon the known principles of equity and justice, would nevertheless take the liberty to state that a sale, under the said execution, would create hardships upon the intestate's other creditors, which would be greatly magnified by the unfavorable circumstances of the times, the great scarcity of money, and the ruinous sacrifice which must be made if the intestate's property is to be "knocked down," under the marshal's hammer, for *cash*. Your orator has no doubt but that the interest of the creditors, generally, will be greatly subserved, by selling the estate of the intestate upon the credit allowed by law, and by using all the precautions for security which it prescribes.

Your orator has been thus minute and particular, in order that the peculiar circumstances of the case, and the reasons why said suggestion of the insolvency of his intestate's estate was not made at an earlier period than it was, (as shown by exhibit C,) might be fully placed before your honor; and in order that it might be made obvious and apparent to your honor, that a sale, under the execution, in favor of Benedict and Benedict aforesaid, and an appropriation of the proceeds thereof to the satisfaction of said execution creditors, will work great injustice and hardship upon the other creditors of the intestate, and he, your orator, believes, a total disregard of the statute regulations of Mississippi, upon a subject over which she has an exclusive control. That it is the wont and custom of the courts of the U. States to observe and regard laws of exclusive State polity, especially when they do not conflict with the higher authorities and enactments of Congress, is a settled principle in the jurisprudence of our country, with which your honor's experience and sound discernment must long since have made your honor familiar. Your orator would represent to your honor, that due notice of this application has been given to the attorney of the plaintiffs in said execution, as will appear from a copy (marked D,) and herewith filed. Your orator, standing as he does in the double capacity of the personal representative of the intestate, and as the trustee of the creditors of the estate which is insolvent, would pray your honor to grant him, and

through him, the creditors of his intestate, that relief which he has been advised is alone to be obtained in your honor's equitable discretion upon the chancery side of your honorable court.

In consideration of the premises, and to prevent future and unnecessary litigation, and, perhaps, irreparable injury and injustice to the other creditors of his intestate's estate, your orator prays your honor to grant him the equitable writ of audita querela, or whatever writ may be necessary, to bring the said Benedict and Benedict, the parties plaintiffs in said execution, their attorney or attorneys, agent or agents, before your honorable court, at the next term thereof, and the allegations and proofs being heard, to cause justice to be done between them.

And your orator further prays your honor to cause a writ of supersedeas to issue, directed to the marshal of north Mississippi, commanding him to stay said execution on said judgment, and stay all further proceedings thereon until your honorable court shall determine and decree, whether said execution creditor shall take a pro rata distribution of the intestate's estate, according to the amount of their demand. And your orator hereby prays for such other and further relief as in justice to all the creditors, and as in your honor's equitable judgment your orator, in behalf of said creditors and of the estate of his intestate, is entitled to. And as in duty bound your orator will ever pray, &c.

J. J. FINLEY, *compl'ts atto.*"

" UNITED STATES OF AMERICA,
State of Mississippi:

Personally appeared before me, Samuel J. Gholson, judge of the United States district court for the northern district of Mississippi, Thomas Williams, the complainant in the above bill, who being first duly sworn says on oath, that the facts stated in the foregoing bill, as of his own knowledge, are true, and those stated on the information of others he believes to be true.

THOMAS WILLIAMS.

Sworn to and subscribed before me, this 7th day of April, 1840.

S. J. GHOLSON.

" To the clerk of the United States district court for the northern district of Mississippi:

Let injunction, &c., issue, as prayed for in the foregoing bill, upon the complainant entering into bond, with good securities to be approved by you, in a penalty equal to double the amount of the judgment at law, conditioned according to law.

Given under my hand, this 7th day of April, in the year 1840.

S. J. GHOLSON,
Judge U. S. D. C. for no. dist. of Mississippi."

Exhibit C.

" STATE OF MISSISSIPPI,
Yallobusha county:
Probate court, December term, 1839.

Thomas Williams, administrator of *of* the estate of Benjamin J. Baldwin, deceased, this day returned into court here his petition, suggesting that the estate of his said intestate is insolvent, or owes more debts than the effects thereof will be sufficient to pay; also an account of the real and personal estate of his said intestate, and of the debts of said Benjamin J. Baldwin, as far as the same have come to his knowledge; and praying the court, by the said petition, to cause to be had in the premises such actings and doings which the law requires; which said petition and accounts are supported by the oath of the said Thomas Williams. Whereupon, the court being satisfied, by the obligations and oath aforesaid, that the estate of the said Benjamin Baldwin, deceased, is insolvent, doth appoint John Harton, Hugh Torrence, and Samuel W. Carn, esq., to be commissioners to receive and audit all claims against said intestate. It is also further ordered, adjudged, and decreed, by the court, that the said Thomas Williams, administrator aforesaid, sell, according to law, all the personal property mentioned in the account by him this day returned to the court, and above named, the said administrator giving legal notice, at three of the most public places in his county, and such other notice as the law requires. It is further ordered, adjudged, and decreed, upon the representations aforesaid, that a citation to issue, directing all persons interested in the lands, tenements, and hereditaments of the said deceased, and especially in the following described lands, to wit, E. ½ of section 8, N. W. ¼ of section 9, S. ½ of section 4, all lying and being in township 24, range 4 east, to appear before the probate to be held in and for said county, on the first Monday of February, 1840, on the first day of the term of said court, then and there show cause why said lands should not be sold according to law. It is further ordered that said citation be published in the Southern Reporter, of Grenada, and the Southern Sun, at Jackson, Miss., six weeks, successively.

STATE OF MISSISSIPPI, *Yala Busha county:*

I, Davidson M. Rayburn, clerk of the probate court of said county, and State aforesaid, do hereby certify, that the foregoing is a true copy from the minutes of said court.

Given under my hand and seal of said court, this 7th day of March, 1840.

D. M. RAYBURN, *Clerk.*
By H. NEWTON RAYBURN, *D. C.*

Judgment of law referred to in the foregoing bill of complaint,

BENEDICT & BENEDICT
vs.
THOMAS WILLIAMS, administrator, &c. } 158.

THURSDAY, December the 12th, 1839.

This day came the parties, by their attorneys, and thereupon came on to be argued plaintiff's demurrer to defendant's plea in abatement, and after argument, as well in favor of, as against said demurrer, it is considered by the court, that the same be sustained, and that said defendant have leave to plead to the merits; which being declined, it is considered by the court, that said plaintiffs recover of defendant the sum of twenty-one hundred and seventy-seven dollars and thirty-two cents, the damages which said plaintiffs have sustained by reason of the non-performance of the promise and assumption in plaintiffs' declaration mentioned, and also the cost in this cause expended, to be levied of the goods and chattels of B. J. Baldwin, in said defendant's hands to be administered.

Substitue for exhibit D, referred to in said bill.

Hon. S. J. GHOLSON: I received a notice from Thomas Williams, on the 3d day of April, of his intention to apply for an injunction in the case wherein Benedict & Benedict are plaintiffs. Said notice was marked D, and I suppose was intended as part of his bill. It having been mislaid or lost, this will, I hope, supercede it, as I am the attorney for the plaintiffs.

GEO. S. GOLLADAY.

Complainant's bond for writs of injunction and supersedeas as follows, to wit:

We, Thomas Williams, as the administrator of Benjamin J. Baldwin, deceased, and Benjamin Williams, George W. Garner, and John S. Topp, securities, acknowledge ourselves bound to John W. Benedict and William H. Benedict, citizens of the State of New York, and trading under the style of Benedict & Benedict, in the sum of forty-five hundred and forty dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, &c.

Witness our hands and seals, this 10th day of April, A. D. 1840.

At the last term of the district court of the United States, for the northern district of Mississippi, the said Benedict & Benedict obtained a judgment against the said Williams, as administrator of the said Baldwin, for twenty-one hundred and seventy-seven dollars and thirty-two cents, or thereabouts. The said Williams has filed his petition for the remedial writs of audita querela and supersedeas, which have been ordered to issue by the judge of said court.

Now, it is conditioned, that the above bond shall be void and of none effect, if the said Williams shall abide by, and perform, the judgment of said court, when the matter in dispute shall be decided between the

665.

parties to the petition, otherwise said bond to operate with full force and virtue.

THOMAS WILLIAMS, [SEAL.]
BENJAMIN WILLIAMS, [SEAL.]
GEORGE W. GARNER, [SEAL.]
JOHN S. TOPP. [SEAL.]

H. NEWTON RAYBURN.

Endorsed thus, "I hereby approve the within and foregoing bond and securities, April 11th, 1840.

G M. RAGSDALE,
Clerk U. S. district court northern district Miss.

Afterwards, to wit, on the 11th day of April, 1840, a certain writ of supersedeas issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States to the marshal of the northern district of Mississippi, greeting:

Whereas in the district court of the United States, for the northern district of Mississippi, at the December term thereof, A. D. 1839, a judgment was obtained against Thomas Williams, administrator of Benjamin J. Baldwin, deceased, at the suit of John W. Benedict and William H. Benedict, partners, trading under the name and style of Benedict & Benedict, for the sum of two thousand one hundred and seventy-seven dollars and thirty-two cents, and cost of suit; and therefore, you were lately commanded, that of the goods and chattels of the said Benjamin J. Baldwin, deceased, in the hands of Thomas Williams, his administrator, to be administered, you should cause to be made the damages, interest, and costs by the judgment aforesaid obtained. Nevertheless, because that writ improvidently and erroneously issued out of the said court; therefore, you are hereby commanded, that from further proceeding to execute the said [writ] upon the judgment aforesaid, you desist and entirely supersede at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1839, and [L. S.] in the 64th year of the independence of the United States. Issued the 11th day of April, 1840.

G. M. RAGSDALE, *Clerk*.

And afterwards, to wit, on the 14th day of April, 1840, a certain writ of injunction issued, in the words and figures following, to wit:

To the marshal of the northern district of Mississippi, to execute and return.

G. M. RAGSDALE, *Clerk*

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States to John W. Benedict and William H. Benedict, their counsellors, attorneys, and agents, greeting:

Whereas it hath been represented to us, in our district court, for the northern district of Mississippi, in chancery sitting, on the part of Thomas Williams, administrator of Benjamin J. Baldwin, deceased, complainant, that he lately exhibited his bill of complaint against you, John W. Benedict and William H. Benedict, their agents and attorneys, defendants, to be relieved touching the matters in said bill contained. We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said John W. Benedict and William H. Benedict, under the penalty of forty-four hundred dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from levying or having levied an execution which issued from our said court against Thomas Williams, administrator of Benjamin J. Baldwin, deceased, in favor of the said Benedict & Benedict, upon a judgment rendered at the December term, 1839, of our said court against Thomas Williams, administrator as aforesaid, in favor of the said Benedict & Benedict, for the sum of twenty-one hundred and seventy-seven and $\frac{32}{100}$ dollars. And from any further proceedings against the said complainant, touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1839, and in the 64th year of the independence of the United States. Issued the 14th day of April, 1840.

[L. S.]

G. M. RAGSDALE, *Clerk.*

Marshal's return on said injunction, to wit:

1840, May . Executed on William G. Kendall and George S. Golliday, the attorneys of record for the said Benedict and Benedict.

ADOLPHUS G. WEER,
Marshal northern district Mississippi.
By ——— ———.

Marshal's fees. Executing and returning	$4 50
Two copies, $1, mileage, $4	5 00
	9 50

Defendants' motion filed at June term, 1840, as follows, to wit:

"Motion to dissolve injunction for want of equity on face of the bill.
GOLIDA & MARSH, *for motion.*"

And afterwards, to wit, on the 17th day of June, 1840, being a day

of the June term of said court, the following proceedings were had in the foregoing cause, to wit:

THOMAS WILLIAMS, administrator of B. J. Baldwin, deceased, vs. BENEDICT & BENEDICT. } 4. Chancery.

WEDNESDAY, June the 17th, 1840.

Motion.

This day came the parties, by attorneys, and then came on to be heard defendant's motion to dissolve the injunction for want of equity, and after argument both for and against said motion, it is ordered by the court that the same be overruled.

Further proceedings had in said cause on the 18th day of June, being a day of said June term of said court, 1840, as follows, to wit:

THOMAS WILLIAMS, admr. of B. J. BALDWIN, deceased, vs. BENEDICT & BENEDICT. } 3.—In chancery.

THURSDAY, *June the* 18*th*, 1840.

This day came on to be heard this cause, and it appearing to the satisfaction of the court that the defendants are not residents of the State of Mississippi, it is ordered by the court, that publication be made in the Mississippian, a newspaper printed at Jackson, in the State of Mississippi, according to the statute in such case made and provided, and that this cause be continued.

Afterwards, to wit, on the 14th day of December, 1840, being a day of the December term of said court, the further proceedings were had in the aforesaid cause, to wit:

THOMAS WILLIAMS, admr., &c., vs. BENEDICT & BENEDICT. } 2.—In chancery.

MONDAY, *December the* 14*th*, 1840.

The defendants in this cause failing to answer, it is ordered by the court, that the bill of complaint be taken as confessed as to said defendants, and that this cause be continued till the next term of this court.

And afterwards, to wit, at the June term, 1841, of said court, being the term next succeeding the term last above written, there were no proceedings had in *in* said cause of Williams, admr., &c., vs. Benedict & Benedict, it standing open.

At the December term, 1841, the defendants, by attorney, filed their certain demurrer to the said bill of complaint in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi:

United States district court, to December term, 1841.

THOMAS WILLIAMS, administrator, &c., vs. BENEDICT & BENEDICT. } In chancery.

The defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demise in law to the said bill, and for cause of demurrer showeth, that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against these defendants touching the matters contained in said bill. And for cause of demurrer saith, that it appears by the complainant's own showing, by his said bill of complaint, that the said complainant is not entitled to relief prayed by his said bill of complaint against these defendants.

Wherefore, and for divers other good cause of demurrer appertaining in the said bill of complaint, these defendants demur to the said bill, and to all matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill, and humbly prays to be hence dismissed with his reasonable cost in this behalf sustained.

GOLLADAY & WAUL.

And afterwards, to wit, on the 1st day of January, 1842, being a day of the December term of said court, 1841, the following proceedings were had in the aforesaid cause, to wit:

THOMAS WILLIAMS, admr., &c., vs. BENEDICT & BENEDICT.

SATURDAY, *January the* 1*st*, 1842.

This day came the parties, by their attorneys, and thereupon came on to be heard defendant's demurrer to complainant's bill, and after argument, the court, not be[ing] advised of the judgment to be rendered, takes the same under advisement.

Further proceedings had in the foregoing cause at the June term of said court, 1842, as follows, to wit:

THOMAS WILLIAMS, admr., &c., vs. BENEDICT & BENEDICT. } 1.

SATURDAY, *June the* 11*th*, 1842.

This day came the parties, by their attorneys, and thereupon this cause was submitted on briefs.

At the December term of said court, 1842, being the term next succeeding the June term, 1842, last above written, there were no pro-

ceedings had in said cause of Williams, admr., &c., vs. Benedict & Benedict; the same stood over.

Afterwards, to wit, at the June term of said court, 1843, the following proceedings were had in the aforesaid cause on the 19th day of June, 1843, to wit:

"THOMAS WILLIAMS, admr., &c.,
vs.
BENEDICT & BENEDICT. } 14.

MONDAY, *June the* 19*th*, 1843.

This cause is continued until the next term of this court.

And afterwards, to wit, on the 9th day of December, 1843, being a day of the December term of said court, the said cause was continued thus:

"THOMAS WILLIAMS, admr., &c.,
vs.
BENEDICT & BENEDICT. } 1.—In chancery.

SATURDAY, *December the* 9*th*, 1843.

By consent of parties, it is ordered by the court, that this cause be continued until the next term thereof."

No proceedings had in said cause at the June term of said court, 1844. It therefore stands over till the December term, 1844.

Proceedings in said cause at December term, 1844, of said court, to wit:

"THOMAS WILLIAMS, admr., &c.,
vs.
BENEDICT & BENEDI } 1.

FRIDAY, *December the* 6*th*, 1844.

"Papers submitted."

And afterwards, to wit, on the 4th day of June, being a day of the June term of said court, 1845, the final decree was made in the foregoing cause, which is in the words and figures following, to wit:

"UNITED STATES OF AMERICA,
Northern district of Mississippi:
District court United States, June term, 1845.

BENEDICT & BENEDICT
vs.
THOMAS WILLIAMS, admr. } On chancery side.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, that the defendant's demurrer to complainant's bill of complaint be sustained, and that the bill be dismissed at the cost of complainant.

Signed, sealed, and ordered to be enrolled this the 4th day of June, 1845, which is accordingly done.

S. J. GHOLSON. [SEAL.]

Bond for writ of error, in the words and figures following, to wit:

"Know all men by these presents, that we, Thomas Williams, administrator of Benjamin J. Baldwin, dec'd, John J. Garner, Samuel R. Garner, Benjamin Williams, and Robert E. Wynn, are held and firmly bound to John W. Benedict and William H. Benedict, citizens of the State of New York, trading under the firm and style of Benedict & Benedict, in the sum of five thousand dollars, to be paid to the said Benedict & Benedict, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 7th day of June, A. D. 1845.

Whereas the said Thomas Williams, adm'r as aforesaid, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the district court of the United States for the northern district of Mississippi, in the case of Benedict & Benedict against Thomas Williams, as administrator of Benjamin J. Baldwin, deceased. And whereas the said Thomas Williams, administrator as aforesaid, on the 11th day of April, A. D. 1840, filed his certain bill in chancery against said Benedict & Benedict, which said bill, on the 4th day of June, 1845, was dismissed. Now, therefore, the condition of this obligation is such, that if the above named Thomas Williams, administrator as aforesaid, shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THOMAS WILLIAMS, Adm'r, [SEAL.]
JOHN J. GARNER, [SEAL.]
SAML. R. GARNER, [SEAL.]
BENJAMIN WILLIAMS, [SEAL.]
ROBT. E. WYNN. [SEAL.]

Signed, sealed, and delivered in presence of—

Said bond has the following endorsements made thereon, to wit:

"The securities are worth four times the judgment named in said bond.

E. S. FISHER,
THOS. CARBRY,
C. A. DAVIS."

"I approve of the within bond and securities. Given under my hand this the 11th day of June, A. D. 1845.

S. J. GHOLSON,
Judge U. S. D. C. for Miss."

"Filed 11th June, A. D. 1845, and writ of error issued.

G. M. RAGSDALE, *Clerk.*"

Afterwards, to wit, on the 4th day of December, 1845, being a day of the December term of said court, the further proceedings were had in the foregoing cause, to wit:

Thursday, December the 4th, 1845.

"THOMAS WILLIAMS, adm'r, &c., vs. BENEDICT & BENEDICT. } Chancery side.

"This cause came on again to be heard, and it is ordered that the final decree, signed the 4th June, 1845, be enrolled. And it is further ordered, on motion of the complainant, that he be allowed an appeal to the Supreme Court of the United States of America, on his entering into bond, conditioned, according to law, in a penalty of double the amount of the judgment enjoined, within sixty days from this order."

In obedience to the foregoing order, the following bond was filed on the 27th day of December, 1845, in the words and figures following, to wit:

"Know all men by these presents, that we, Thomas Williams, administrator of Benjamin J. Baldwin, deceased, John J. Garner, Samuel R. Garner, Benjamin Williams, and Robert E. Wynn, are held and bound unto John W. Benedict and William H. Benedict, citizens of the State of New York, trading under the firm and style of Benedict & Benedict, in the sum of five thousand dollars, to be paid to the said Benedict & Benedict, their executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 19th day of December, A. D. 1845.

Whereas the above bound Thomas Williams, administrator as aforesaid, hath prayed and obtained an appeal to the Supreme Court of the United States of America, from a judgment and decree made and entered by the district court of the United States for the northern district of Mississippi, in a case in which the said Thomas Williams, administrator as aforesaid, was complainant, and the said Benedict & Benedict were defendants. Now, the condition of the above obligation is such, that if the above named Thomas Williams shall prosecute his said appeal to effect, and answer all damages and costs, in case said judgment and decree shall be affirmed, and shall abide and perform the order and decree of the said Supreme Court in the premises, then this obligation shall be void, otherwise shall be and remain in full force and virtue.

THOMAS WILLIAMS, [SEAL.]
JOHN J. GARNER, [SEAL.]
SAM'L R. GARNER, [SEAL.]
BENJAMIN WILLIAMS, [SEAL.]
ROBT. E. WYNN. [SEAL.]

I approve of the above bond and securities.
Given under my hand, this 27th December, 1845.

S. J. GHOLSON,
Judge U. S. D. C., for Mississippi.

UNITED STATES OF AMERICA,

Northern district of Mississippi.

I, G. M. Ragsdale, clerk of the district court of the United States, for the northern district of Mississippi, certify, that the above and foregoing eighteen pages contain a full, true, and complete transcript of the bill of complaint filed in said cause of Thomas Williams, administrator of Benjamin J. Baldwin, deceased, vs. Benedict & Benedict, as the same appears of record and on file in my office. I further certify, that I herewith file the original writs of error and citations, true copies of which remain on file in my office.

Given under my hand, and the seal of said court, at office in Pontotoc, this the 1st day of August, A. D. 1846.

[L. S.]

G. M. RAGSDALE, *Clerk*.

1*st writ of error*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States, for the northern district of Mississippi, greeting.

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court before you, between Thomas Williams, administrator of Benjamin J. Baldwin, deceased, plaintiff, (in chancery,) and John W. Benedict and William H. Benedict, partners, trading under the firm and style of Benedict & Benedict, defendants, a manifest error hath happened, to the great damage of the said Thomas Williams, administrator as aforesaid, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the second Monday in January next; in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme court of the United States, the second Monday of January, A. D. 1845, and of the independence of the United States the 69th. Issued the 11th day of June, A. D. 1845.

[L. S.]

G. M. RAGSDALE, Clerk.

Clerk of the district court of the United States, for the northern district of Mississippi.

1st citation.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

To John W. Benedict and William H. Benedict, partners, trading under the firm and style of Benedict & Benedict, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in January next, pursuant to a writ of error filed in the office of the clerk of the district court of the United States, for the northern district of Mississippi, wherein Thomas Williams, adm'r of Benjamin J. Baldwin, deceased, is plaintiff, and you are defendants in error; to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme court of the United States, the second Monday in January, A. D. 1845, and of the independence of the United States the 69th year. Issued the 11th day of June, A. D. 1845.

[L. S.]

S. J. GHOLSON.

Came to hand and executed the 9th day of October, 1845, by making known the contents to Gen'l Waul, one of defendants' counsel.

ANDREW A. KINCANNON,
Marshal of the northern district of Mississippi.

Marshal's fees—Executing citation,		$2 00
Return and ent'g,		1 00
Mileage,	- -	4 00
		$7 00

2d writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in said court before you, between Thomas Williams, administrator of Benjamin J. Baldwin, deceased, complainant, and John W. Benedict and William H. Benedict, partners, trading under the firm and style of Benedict & Benedict, respondents, (chancery side,) a manifest error hath happened, to the great damage of the said Thomas Williams, administrator as aforesaid, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you